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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONNIE J. STRAIT,) Case No. CV 10-3405-OP
Plaintiff,)
v.) MEMORANDUM OPINION; ORDER
MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
Defendant.)

The Court¹ now rules as follows with respect to the disputed issue listed in the Joint Stipulation (“JS”).²

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¹ Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (See Dkt. Nos. 7, 9.)

² As the Court stated in its Case Management Order, the decision in this case is made on the basis of the pleadings, the Administrative Record, and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

I.

DISPUTED ISSUE

As reflected in the Joint Stipulation, the sole disputed issue that Plaintiff raises as the ground for reversal and/or remand is whether the Administrative Law Judge (“ALJ”) properly considered the medical evidence as contained in the treating opinion from Susan Yoshino, M.D. (JS at 4.)

II.

STANDARD OF REVIEW

9 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision
10 to determine whether the Commissioner’s findings are supported by substantial
11 evidence and whether the proper legal standards were applied. DeLorme v.
12 Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more
13 than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402
14 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of
15 Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial
16 evidence is “such relevant evidence as a reasonable mind might accept as adequate
17 to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The
18 Court must review the record as a whole and consider adverse as well as
19 supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986).
20 Where evidence is susceptible of more than one rational interpretation, the
21 Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450,
22 1452 (9th Cir. 1984).

III.

DISCUSSION

A. The ALJ's Findings.

26 The ALJ found that Plaintiff had the following severe impairments: gout,
27 back pain, diabetes mellitus, obesity, hypertension, depressive disorder, and
28 borderline intellectual functioning. (Administrative Record (“AR”) at 14.) The

1 ALJ also found that Plaintiff had the residual functional capacity (“RFC”) to
2 perform medium work not involving more than simple, repetitive tasks, with no
3 more than limited contact with the public. (Id. at 19, 22.)

4 Relying on the testimony of a vocational expert (“VE”) to determine the
5 extent to which Plaintiff’s limitations eroded the unskilled medium occupational
6 base, the ALJ asked the VE whether jobs exist in the national economy for an
7 individual with Plaintiff’s age, education, work experience, and RFC. (Id. at 24.)
8 Based on the testimony of the VE, the ALJ determined Plaintiff could perform the
9 requirements of representative unskilled/medium work occupations such as Hand
10 Packer (Dictionary of Occupational Titles (“DOT”) 920.587-018) and
11 Cleaner/Janitor (DOT 381.687-018). (Id.)

12 **B. Treating Physician.**

13 Plaintiff contends that the ALJ rejected the opinion of Dr. Yoshino, who
14 treated Plaintiff at the Venice Family Clinic “every 1-2 months since May 2006,”
15 without providing a “legally sufficient rationale.” (JS at 5-8.) Specifically, in a
16 “Physical Residual Functional Capacity Questionnaire” dated September 29, 2008,
17 Dr. Yoshino diagnosed Plaintiff with diabetes, hypertension, obesity, and gout,
18 and noted symptoms of fatigue, insomnia, stomach pain, and foot numbness. (AR
19 at 373.) Dr. Yoshino also noted that Plaintiff’s depression and anxiety affected his
20 physical condition. (Id. at 374.) Based on these impairments and symptoms, Dr.
21 Yoshino opined that Plaintiff had the following limitations on his ability to work:
22 Plaintiff was capable of “performing low stress” work; Plaintiff could neither sit
23 nor stand for more than thirty minutes at a time; Plaintiff could occasionally
24 lift/carry ten pounds or less, rarely lift/carry twenty pounds, and never lift/carry
25 fifty pounds; Plaintiff had mild limitations in doing repetitive reaching, handling,
26 or fingering; and Plaintiff likely would be absent from work “about 3 days per
27 month” due to his impairments. (Id. at 374-76.)

28 With respect to Dr. Yoshino’s opinion, the ALJ stated:

1 Although, as noted above, treating physician, Dr. Yoshin [sic],
2 effectively assessed the claimant as unable to sustain even sedentary
3 level exertional activity, the undersigned finds that the medical findings
4 submitted by this physician and otherwise documented in the record do
5 not support a finding that the claimant's medical condition is of
6 disabling severity, nor does the treating physician provide an assessment
7 of the claimant's residual functional capacity which is compatible with
8 the record as a whole. As noted above, medical records from Dr.
9 Yoshin's [sic] clinic reflect little more than routine medical care and
10 monitoring of the claimant's condition. There is no indication Dr.
11 Yoshin [sic] ever referred the claimant for intensive treatment, physical
12 therapy, inpatient care, etc. and the functional limitations Dr. Yoshin
13 [sic] cites are inconsistent with the Venice Clinic records, which fail to
14 cite such complaints or restrictions or reflect clinical findings consistent
15 with the limitations assessed, and the claimant's performance during Dr.
16 Lim's examination, in which, but for some slightly diminished lumbar
17 spine motion, the claimant retained full mobility and neurological
18 functioning. Therefore, the treating physician appears to have taken the
19 claimant's subjective allegations at face value and merely reiterated
20 those allegations in her reports and when making her assertions
21 regarding the claimant's ability to work. Her assertions do not appear
22 to take into account the other factors which must be considered by the
23 undersigned, such as the other medical reports and opinions as well as
24 the vocational factors involved. Accordingly, even though the treating
25 physician's opinions have been duly considered, in view of the overall
26 record, they are not found to be persuasive or controlling.

27 (Id. at 21.)

28 It is well-established in the Ninth Circuit that a treating physician's opinions

1 are entitled to special weight, because a treating physician is employed to cure and
2 has a greater opportunity to know and observe the patient as an individual.

3 McAllister v. Sullivan, 880 F.2d 1086, 1089 (9th Cir. 1989). The weight given a
4 treating physician's opinion depends on whether it is supported by sufficient
5 medical data and is consistent with other evidence in the record. See 20 C.F.R. §
6 404.1527(d)(2). If the treating physician's opinion is uncontroverted by another
7 doctor, it may be rejected only for "clear and convincing" reasons. Lester v.
8 Chater, 81 F.3d 821, 830 (9th Cir. 1995); Baxter v. Sullivan, 923 F.2d 1391, 1396
9 (9th Cir. 1991). If the treating physician's opinion is controverted, it may be
10 rejected only if the ALJ makes findings setting forth specific and legitimate
11 reasons that are based on the substantial evidence of record. Thomas v. Barnhart,
12 278 F.3d 947, 957 (9th Cir. 2002); Magallanes v. Bowen, 881 F.2d 747, 751 (9th
13 Cir. 1989); Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987).

14 "The treating physician's opinion is not, however, necessarily conclusive as
15 to either a physical condition or the ultimate issue of disability." Magallanes, 881
16 F.2d at 751 (citing Rodriguez v. Bowen, 876 F.2d 759, 761-62 & n.7 (9th Cir.
17 1989)); Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (although a
18 treating physician's opinion is generally afforded the greatest weight in disability
19 cases, it is not binding on an ALJ with respect to the existence of an impairment or
20 the ultimate determination of disability). The issue of whether a claimant is
21 disabled within the meaning of the Social Security Act is an issue reserved for the
22 Commissioner, and, therefore, the opinion of a treating physician that a claimant is
23 disabled will not be given special significance. 20 C.F.R. §§ 404.1527(e)(1),
24 416.927(e)(1).

25 Here, the ALJ considered Dr. Yoshino's opinion that Plaintiff was "unable
26 to perform even sedentary level exertional activity[.]" (AR at 21, 372-76.)
27 However, the ALJ rejected Dr. Yoshino's opinion based on the lack of supporting
28 objective evidence and lack of consistency with the record as a whole. (Id. at 21.)

1 An ALJ may properly discount a treating physician's opinion that is not supported
2 by clinical findings. See Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005);
3 Thomas, 278 F.3d at 957 (ALJ need not accept treating physician's opinion that is
4 inadequately supported by clinical findings). The ALJ reviewed Plaintiff's
5 records from the Venice Family Clinic, where he was treated between 2004 and
6 2008. (AR 15, 132-231, 265-346.) As the ALJ noted, laboratory results from
7 December 2, 2004, and July 17, 2004, reflect Plaintiff's elevated glucose levels,
8 usually associated with diabetes, and uric acid levels, usually associated with gout,
9 respectively. (Id. at 15, 221, 229.) Plaintiff experienced occasional "flare ups" of
10 gout in his feet. (Id. at 15, 196.) Additionally, Plaintiff's blood pressure was
11 elevated, and he was obese. (Id. at 15, 198.) As of December 14, 2004, Plaintiff
12 was diagnosed with diabetes mellitus and prescribed appropriate medication. (Id.
13 at 15, 187.)

14 However, Plaintiff's treatment records reflect that his gout improved
15 quickly with proper medication. (Id. at 15, 190, 195.) Plaintiff's hypertension
16 also improved with medication; his symptoms only became aggravated when he
17 failed to take his medication as prescribed or he did not have medication. (Id. at
18 15, 190-92.) Throughout 2005 and 2006, Plaintiff did not demonstrate any
19 deterioration in his condition. (Id. at 15, 138-79.) With respect to Plaintiff's
20 diabetes, records from January 18, 2005, and May 9, 2006, demonstrate that
21 Plaintiff did not have diabetic retinopathy. (Id. at 15, 208, 218.) Similarly,
22 records from May 30, 2006, July 13, 2007, and July 25, 2008, demonstrate that
23 Plaintiff had no symptoms of diabetic neuropathy-related symptoms in his feet.
24 (Id. at 15, 274, 287 344.) Laboratory results from June 24, 2008, demonstrate that
25 Plaintiff's glucose levels were slightly above the normal range. (Id. at 15, 342.)
26 As the ALJ noted:

27 [A]lthough the claimant has diabetes, he has not experienced any
28 diabetes-related end organ damage such as retinopathy or neuropathy

1 and has been repeatedly tested with negative results for diabetic foot
2 problems. It appears that as long as the claimant takes his medication
3 and watches his diet and weight, his diabetes is controllable. That same
4 holds true for his gout condition. The claimant's reported gout flare-ups
5 have coincided with non-compliance with his medication . . . [a]lso,
6 whereas the claimant has been diagnosed with hypertension, there is
7 again no evidence that the claimant has experienced end-organ damage
8 or chronic edema secondary to cardiac problems. The claimant's
9 hypertension appears largely controlled with proper medication, diet and
10 weight loss.

11 (Id. at 21.)

12 Further, the ALJ noted that Dr. Yoshino's opinion was inconsistent with the
13 opinion of Dr. Seung Ha Lim, M.D., an examining physician. An examining
14 physician's opinion constitutes substantial evidence when it is based on
15 independent clinical findings. Orn v. Astrue, 495 F.3d 625, 631 (9th Cir. 2007).
16 Dr. Lim's report, dated October 12, 2007, noted that Plaintiff's gait and balance
17 were normal; Plaintiff's range of motion for his back was "mildly decreased," his
18 range of motion of the joints of the upper and lower extremities was within normal
19 limits, and there were no signs of radiculopathy; Plaintiff's blood pressure was
20 mildly elevated; and Plaintiff's neurological examination was normal. (AR at
21 238-40.) Based on his examination, Dr. Lim provided the following functional
22 assessment: Plaintiff could stand, sit, and/or walk for six hours in an eight-hour
23 work day; Plaintiff could lift and or carry fifty pounds occasionally and twenty-
24 five pounds frequently; and Plaintiff was not limited with respect to pushing and
25 pulling. (Id. at 240.) As the ALJ noted, Dr. Lim's assessment was consistent with
26 the assessment of Dr. Georgina B. Huskey, M.D., the State Disability
27 Determination Service physician. (Id. at 16, 243-48.) A non-examining
28 physician's opinion constitutes substantial evidence when it is supported by other

1 evidence in the record and is consistent with it. Andrews v. Shalala, 53 F.3d 1035,
2 1041 (9th Cir. 1995).

3 Dr. Yoshino's opinion was inconsistent with other evidence in the record as
4 well. A lack of consistency with the record may be used to discount a treating
5 physician's opinion. Orn, 495 F.3d at 631–32. Even Plaintiff's own statements do
6 not support Dr. Yoshino's extreme findings. For instance, in a Function Report
7 completed by Plaintiff on September 1, 2007, Plaintiff indicated that he suffered
8 from gout, diabetes, nervousness, and concentration problems. However, Plaintiff
9 also indicated that he prepared his own meals, helped with laundry, exercised,
10 shopped, and visited his friends outside his mother's house. Plaintiff also stated
11 that he could lift thirty to thirty-five pounds. (AR at 102-05.)

12 Based on the above, the Court finds that the ALJ provided specific and
13 legitimate reasons supported by substantial evidence in the record for rejecting Dr.
14 Yoshino's opinion. Thus, there was no error.

15 **IV.**

16 **ORDER**

17 Based on the foregoing, IT THEREFORE IS ORDERED that Judgment be
18 entered affirming the decision of the Commissioner, and dismissing this action
19 with prejudice.

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21 Dated: April 29, 2011



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HONORABLE OSWALD PARADA
United States Magistrate Judge